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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission

In the Matter of	)	
	)	
Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

To: The Commission

COMMENTS OF E! ENTERTAINMENT TELEVISION, INC.

E! Entertainment Television, Inc. ("E!"), by its attorneys, hereby submits its comments on the Commission's Notice of Proposed Rulemaking [1] to implement the rate regulation provisions of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"). As a provider of video programming, E! is vitally concerned that the Commission's new regulations do not discourage cable operators from adding new programming services or force operators to package and market programming in ways that are detrimental to innovative marketing and consumer choice.

I. The Relationship between Rate Regulation and Program Diversity Generally

The rules that the Commission adopts in this proceeding will affect not only the price of programming to cable subscribers, but also whether consumers will have access to the wide variety of programming choices that the Act

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[1] FCC 92-544 (released Dec. 24, 1992) ("Notice")

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envisions.[2] E's experience from launch through the present, which other creators of new programming share, illustrates the importance of a regulatory climate in which cable systems are free to add and market new programming services without unnecessary restrictions.

Formerly named "Movietime," the network that is now E! was launched in July of 1987 -- after rate deregulation -- and began telecasting movie trailers by satellite. Its founders were a real estate developer and the former manager of a Los Angeles area cable system. In July of 1990, the network's format was changed completely, and the channel was relaunched as E! Entertainment Television. Initially, the relaunched service offered rotating short segments of entertainment news and information. Then, in January of 1992, E! changed its programming format to long-form (hour and half-hour) programs.

E! now distributes via satellite a 24-hour advertiser-supported cable network of news and programs about the entertainment industry to approximately 21,000,000 television households. From a new, state-of-the-art production facility in Los Angeles, E!'s staff of 350 employees produce some six hours of original programming each day, such as "The Whole

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[2] Section 521(4) of the Act, for example, specifies that one of the purposes of the statute is to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public."

World Is Watching," a recent one-hour documentary on the exporting of American entertainment. By covering the entertainment industry, E! also provides television viewers a valuable and unique electronic review of current entertainment choices.

Because E! is advertiser-supported, increasing its audience has been critical not only to the generation and growth of revenue but also to the network's ability to attract investment capital. To date, rate deregulation has given cable operators the flexibility to add new programming services such as E! with the assurance of receiving a fair return on the investment. Unhindered by regulatory obstacles, E! and its counterparts have begun to achieve a sufficient audience base to attract the advertising revenues necessary to sustain their existence and fuel creation of new and better programming. Even with a favorable regulatory environment, however, new programming services still find it difficult to gain access to a rapidly dwindling number of available channels.

If the Commission adopts rate regulations that prevent cable operators from earning sufficient revenues, including a return on investment, systems will be forced to cut back on service. They will be unable to incur new programming costs or to fund the channel expansion needed to accommodate new programming. Perhaps systems will even be forced to drop existing channels. If, in order to generate sufficient revenues, cable operators must structure their service offerings in a manner that precludes effective marketing and innovation, programming also will suffer.

II. Impact of Specific Commission Proposals on Program Diversity

The Commission has tentatively proposed to adopt a "benchmark" approach to regulating cable rates. E! directs the Commission's attention to the potential economic disincentives inherent in such a scheme. In view of the recognized tendency of rates to "converge" over time to the benchmark, a cable operator subject to such regulation will hesitate to increase costs that it cannot readily "recapture." Ultimately, this will result in operators' unwillingness to add programming to existing channels or to expand channel capacity through conversion to new technologies such as fiber optics. Either operator response will harm programmers.

The Commission's rate regulation scheme must create incentives for cable systems to add programming, for example, by allowing cable operators automatically to flow-through their net increased costs for programming and system improvements such as channel expansion or conversion to new technologies. In addition, the rules should allow the use of traditional cost-of-service regulation as an option for systems that cannot earn a fair return under the benchmark approach because their costs are significantly above average.

The Notice correctly recognizes that cable rate regulation should not create "unintended limits on a cable operator's discretion to tier programming services" [3] or unduly restrict "the ability of cable operators to provide a full range of services on either the basic or higher level service tiers." E! urges the Commission to adhere to this principle in enacting rules. Setting artificially low prices for certain tiers effectively would prevent cable operators from arranging or rearranging service offerings to meet consumer demand. Thus, to insure that cable operators have sufficient flexibility, the Commission should make each tier financially self-supporting and should not require one tier or level of service to subsidize another.

III. Conclusion

Regardless of what form its rate regulation takes the Commission should consider the impact of its rules on programming. Accordingly, it should avoid imposing requirements that artificially or unnecessarily limit cable operators' ability to continue carrying programming services, to add new channels, and to package and market offerings to best meet consumers' needs and desires. The advantages of

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[3] Notice, ¶32

following this advice will be apparent in the continued availability and growth of diverse and innovative programming.

Respectfully submitted,

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